

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

NETLIST, INC.,)	
)	
Plaintiff,)	
)	Case No. 2:22-cv-293-JRG (Lead Case)
vs.)	
)	JURY TRIAL DEMANDED
SAMSUNG ELECTRONICS CO., LTD, ET)	
AL.,)	<div style="background-color: black; width: 150px; height: 1.2em;"></div>
)	
Defendants.)	
)	
)	
)	
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NETLIST, INC.,)	
)	
Plaintiff,)	
)	Case No. 2:22-cv-294-JRG (Member Case)
vs.)	
)	JURY TRIAL DEMANDED
MICRON TECHNOLOGY, INC.; MICRON)	
SEMICONDUCTOR PRODUCTS, INC.;)	<div style="background-color: black; width: 150px; height: 1.2em;"></div>
MICRON TECHNOLOGY TEXAS LLC,)	
)	
Defendants.)	
)	
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**MICRON’S DAUBERT MOTION AND MOTION TO STRIKE
EXPERT TESTIMONY OF PETER GILLINGHAM**

The Micron Defendants (“Micron”) hereby respectfully move to strike certain sections of the report of Plaintiff’s expert Peter Gillingham that (i) were not timely disclosed to Micron; (ii) solely involve the Samsung co-defendants; and/or (iii) merely parrot documents and witness testimony without providing any expert analysis.

I. LEGAL AUTHORITY

An expert may testify only if “(a) the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case.” Fed. R. Evid. 702; *Daubert v. Merrell Dow Phannns., Inc.*, 509 U.S. 579, 592-93 (1993). The proponent of expert opinions must demonstrate admissibility by a preponderance of the evidence. *Moore v. Ashland Chem. Inc.*, 151 F.3d 269,276 (5th Cir. 1998) (en banc).

This Court has struck portions of expert reports that merely “parrot facts from the documents and witnesses without adding any expert analysis.” *United Services Automobile Association v. Wells Fargo Bank, N.A.*, 2:18-CV-00366-JRG-RSP, 2019 WL 6896674, at *2 (E.D.Tex., Dec. 12, 2019) (internal quotations omitted).

II. ARGUMENTS

A. The Court Should Strike the Untimely Produced Portions of Mr. Gillingham’s Reports That Were Previously Redacted

The Court should strike the paragraphs of Mr. Gillingham’s report that were redacted when served upon Micron and only unredacted weeks *after* the deadline for expert reports.

More specifically, Netlist served a report by Mr. Gillingham to Micron on December 21,

[REDACTED]

2023 on the deadline for expert reports.¹ The report included significant redactions over many pages. *See* Ex. A (Peter Gillingham Redacted Report) at ¶ 38, 70, 76-79, 85, 90, 110, 112-113, 124, 126-127, 135 and footnotes 16, 43, 79, 91, 98, 110. Netlist did not produce to Micron an unredacted version until January 11, 2024. Indeed, Netlist made this untimely production in the middle of the Mr. Gillingham deposition conducted jointly by Micron and the Samsung co-defendants.

Micron's request does not pose any unfair prejudice to Netlist. Mr. Gillingham confirmed during his deposition that his Report was a combined report addressing issues in both the *Samsung* litigation (Case No. 293) and the *Micron* litigation (Case No. 294), and that the redacted portions are only directed to Samsung confidential information. [REDACTED]

[REDACTED]

[REDACTED] Micron is only seeking to strike the Samsung-related portions that were not timely disclosed in the *Micron* litigation (Case No. 294) because they were redacted, and Netlist is free to use the redacted Samsung related information in its other *Samsung* litigation (Case No. 293), if appropriate.

B. The Court Should Strike the Portions of Mr. Gillingham's Report That Deal Solely With the Samsung Co-Defendants.

The Court should also strike the un-redacted paragraphs of Mr. Gillingham's report that deal solely with *Samsung* litigation (Case No. 293) issues. Specifically:

- Paragraphs 37, 39, 48-50, 52,² 54, 97-98, 107, and 125-126 repeat deposition

¹ The report was strangely included a signature block that was unsigned, but Mr. Gillingham confirmed at deposition that the unsigned report offered his opinions.

² Mr. Gillingham does not provide a specific citation to the earlier *Samsung* litigation in this paragraph, but generally refers to *Samsung* testimony "[a]s set forth above, [where] Netlist's witnesses testified ...".

11/11/2016

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[REDACTED]

and is unfairly prejudiced by admission of the untested hearsay testimony. Netlist is not prejudiced by Micron's request to strike these paragraphs because, as stated in the previous section, Micron is only seeking to strike the Samsung-related paragraphs in the *Micron* (Case No. 294), and Netlist is free to use the Samsung related information in its other *Samsung* litigation (Case No. 293), if appropriate.

C. The Court Should Strike the Portions of Mr. Gillingham's Report That Merely Parrot Documents and Witness Testimony Without Adding Expert Analysis

The Court should strike the paragraphs of Mr. Gillingham's report that merely quote documents or witness testimony without providing expert analysis. These portions do not "help the trier of fact to understand the evidence or to determine a fact in issue and thus should be excluded as expert testimony." *United Services Automobile Association*, 2019 WL 6896674, at *3 (internal quotations omitted). Specifically, the Court should strike:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

United Services Automobile Association is illustrative. There, the Court struck paragraphs in an expert’s report, where the expert mere recited the background of an industry and other facts “largely through the summation of various documents and testimony.” 2019 WL 6896674, at *2. The Court found that these paragraphs” do not employ Mr. Calman’s expertise to help the jury understand facts or issues beyond a lay person’s understanding ... [and] do not contain expert opinions useful to the jury.” *Id.* Similarly, here, Mr. Gillingham’s parroting of presentations, notes and testimony adds no expertise and should be struck. Like in *United Services Automobile Association*, Micron does not object to Mr. Gillingham “providing factual testimony regarding the topics covered in these paragraphs to the extent such testimony is within [his] personal knowledge as a fact witness.” *Id.* But dressing up summaries of factual documents and testimony as expert opinions—without providing any expert analysis—is improper, prejudicial and should be struck.

III. CONCLUSION

For the foregoing reasons, Micron respectfully requests that the Court grant Micron’s motion.

Dated: January 16, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, on January 16, 2024, a copy of the foregoing was served on all counsel of record via the Court's ECF system.

/s/ Mike Rueckheim
Mike Rueckheim

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CERTIFICATE OF CONFERENCE

I hereby certify that counsel for Micron and Netlist met and conferred regarding Micron's Daubert Motion and Motion to Strike Expert Testimony of Peter Gillingham. Netlist's counsel indicated that Netlist opposes Micron's motion.

/s/ Mike Rueckheim
Mike Rueckheim